

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. Prior to September 2008 the petitioner's mother resided in the petitioner's home in the community, and she received a spousal allocation from her husband's income to help meet her financial needs. The petitioner and her son were also living in that home. Pursuant to separate

documents executed by her parents prior to 2004 the petitioner had power of attorney for her mother and was her father's guardian.

3. Sometime over the summer of 2008 the petitioner's mother left the petitioner's home and went to live with another of her children. On July 23, 2008 the petitioner's mother officially designated another individual to be her power of attorney.

4. The petitioner remained her father's guardian. She received his income in his behalf, and she was responsible for paying his bills.

5. On September 4, 2008 the Department received a request from the petitioner's mother to "decline" receiving a spousal allocation from her husband's income, representing that she was no longer residing in the petitioner's home. That same day, the Department sent the petitioner (as her father's guardian) a notice that his patient share had been increased due to the loss of the allocation from his income to support his spouse in the community.¹

¹The "patient share" of a long-term care Medicaid recipient is the amount of that recipient's income that must be contributed by the recipient for his care. The remainder of the costs of long-term care are paid by Medicaid. See W.A.M. § M432.3.

6. On October 3, 2008 the petitioner filed an appeal of this decision. At a telephone hearing held on November 12, 2008 the petitioner represented that she and her son were still living in the house and that she needed her mother's community spouse allocation to maintain the house for herself and her son. The petitioner conceded that her mother had moved out of the home, and that she (the petitioner) had taken no legal action to contest either her mother's competence or her siblings' role in her mother's decision to move out of her home and stop receiving a spousal allocation.²

7. The hearing was continued for several months based on the petitioner's representations that her mother had not, in fact, signed the statement that she no longer wished to receive her spousal allowance, and that her mother would meet with the Department to verify that she never intended to forego her spousal allowance.

8. In January 2009 the Department informed the petitioner and the Board that the petitioner's mother had met with Department employees at its district office, and that the petitioner's mother had represented that she *had* signed

²The petitioner was advised that she was free to take such action, but that the Human Services Board was not the forum to resolve these family issues.

the September statement, and that she had *not* changed her mind about foregoing her spousal allocation.

9. At a status conference held on March 11, 2009 the petitioner conceded that her mother has not returned to live with her, but maintained that her mother is subject to undue influence by her sister. However, the petitioner also conceded that other than this fair hearing she has not taken any legal action in her mother's behalf.

10. The petitioner, herself, receives no benefits or services from the Department. She remained her father's guardian and continued to receive his income and was responsible for paying his bills. It remained her responsibility to pay to the nursing home her father's portion (i.e., patient share) of his long-term care expenses.

11. The petitioner admits that when her mother was living with her she used the amount of her mother's spousal allowance from her father's income to help pay the expense of maintaining her and her mother's mutual home. Once her mother was not living with her, and had discontinued her spousal allowance, her father had to pay the nursing home the additional amount of his wife's former spousal allowance. It is not clear whether the petitioner paid the full amount of

her father's patient share once her mother discontinued her spousal allocation.

12. Although it might appear that the petitioner's mother was ill-advised to forego receiving her spousal allowance, the petitioner's father was adversely affected by his wife's decision only if the petitioner, as *his* guardian, did not use all his available income to pay his patient share of his nursing home bill.

13. The petitioner has made no claim or showing that once her mother moved out of her home she did or would use any part of her father's spousal allocation to pay for her mother's needs in the community.³

ORDER

The Department's decision is affirmed.

REASONS

W.A.M. § M432.31 specifies that an allocation to a community spouse is "for the needs of spouses living in the community". In this case, the petitioner argues that she is aggrieved by the fact that she no longer has use of her

³ It appears that the decision by the petitioner's mother (and those now acting in her behalf) to forego her spousal allowance is based on the fact that it is payable to the petitioner, and that the petitioner has refused to pay this money to her mother since her mother moved out of the petitioner's home.

mother's spousal allocation to maintain the house where her mother no longer lives, but where she, the petitioner, continues to reside. It is clear that the petitioner no longer has any consent or capacity to direct her mother's affairs, and she has presented no factual or legal basis for the Department (or the Board) not to implement and respect her mother's request regarding the benefits in question. Nothing in the regulations requires the Department to continue deducting a community spouse allocation when it is not being utilized by the community spouse and when the community spouse has clearly and unequivocally declared she does not want it to continue.

Inasmuch as there is no evidence or indication that the petitioner's mother any longer either wants or would receive any benefit from a community spouse allocation, it cannot be concluded that the Department's decision is not in accord with the pertinent Medicaid regulations. Therefore, that decision must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D

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